

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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JEFFREY ZINK, on behalf of himself  
and all others similarly situated,

Plaintiffs,

v.

**ORDER**  
13-CV-1076-A

FIRST NIAGARA BANK, N.A.,

Defendant.

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This case was referred to Magistrate Jeremiah J. McCarthy for pretrial proceedings pursuant to 28 U.S.C. § 636(b)(1). On January 27, 2014, Magistrate Judge McCarthy filed an Amended Report and Recommendation (Dkt. No. 51) recommending that defendant First Niagara Bank, N.A.'s, motion to dismiss (Dkt. No. 37) plaintiff Jeffrey Zink's Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6) be denied. Defendant First Niagara filed objections to the Amended Report and Recommendation primarily on the ground that federal law preempts plaintiff Zink's state law civil penalty claim for late presentment of a satisfaction of mortgage. (Dkt. No. 52).

The Court carefully reviewed the Amended Report and Recommendation, the pleadings submitted by the parties, and, after oral argument April 11, 2014, it is hereby

**ORDERED**, upon *de novo* review of defendant First Niagara's objections pursuant to 28 U.S.C. § 636(b)(1) to the Amended Report and Recommendation, and for all the reasons stated in the Amended Report and Recommendation, defendant's motion to dismiss (Dkt. No. 37) is denied.

The case is recommitted to Magistrate Judge McCarthy pursuant to the terms of the Court's prior referral order for further proceedings.

**IT IS SO ORDERED.**

*Richard J. Arcara*  
HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT COURT

Dated: May 9, 2014